

DETAINED

Magistrate Judge S. Kate Vaughan

Adam W. Boyd
GIBBS HOUSTON PAUW
1000 Second Avenue, Suite 1600
Seattle, WA 98104-1003
(206) 682-1080
Adam.Boyd@ghp-law.net

Attorney for Petitioner

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YUSHOU GHENG,

Petitioner,

v.

KRISTI NOEM, *et al.*;

Respondents.

CASE NO.: 2:26-cv-00094-SKV

**PETITIONER'S REPLY TO FEDERAL
RESPONDENTS' RETURN
MEMORANDUM**

Noted for Consideration:
February 2, 2026

I. INTRODUCTION

Respondents ask this Court to deny habeas jurisdiction by invoking 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9), arguing that Petitioner's challenge to his detention is "inextricably intertwined" with removal proceedings and therefore must be litigated only through the removal case and a later petition for review. Dkt 5, at 3-6. That framing is wrong for purposes of relief sought here. Petitioner does not ask this Court to terminated proceedings or adjudicate the

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Gibbs Houston Pauw
1000 Second Avenue, Suite 1600
Seattle, WA 98104
(206) 929-3880

1 merits of removability. He makes no claim that this court has authority to influence the removal
2 proceedings or process. Instead, he asks for one thing, release from detention. This Court can
3 grant meaningful habeas relief without impacting the removal proceedings by simply ordering
4 the government to release petitioner pending further proceedings or by ordering the agency to
5 provide him with an individualized custody hearing at which DHS must justify continued
6 detention.

7 If the government's framing of the case were adopted it would effectively make
8 unlawful detention unreviewable for months or years, because Mr. Cheng cannot file a petition
9 for review until there is a final removal order, something the agency has refused to issue to him.
10 This type of procedural gap is exactly what habeas relief exists to prevent. To assume that the
11 limitations of judicial review contained in 8 U.S.C. § 1252(b)(9) prevent all habeas petitions,
12 even those not directly challenging an order of removal, is simply too broad a reading of the
13 statute. Petitioner agrees that the court would not have jurisdiction to order the immigration
14 court to terminate proceedings, but it does retain jurisdiction to hold that he should be released
15 while the agency resolves these ultimate decisions. The district court always retains § 2241
16 authority to remedy unconstitutional detention, even where the ultimate legal issue of
17 termination must be forestalled for a later date.

18 **II. BACKGROUND**

19 Respondents assert: (1) Petitioner is charged as an "arriving alien," (2) ICE detained him
20 "mandatorily" under 8 U.S.C. § 1225(b), and (3) Petitioner has filed a motion to terminate in
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1 immigration court challenging the charge. Respondents also add additional factual allegations
2 that have not been raised or pled in Immigration Court. These include that Petitioner was
3 previously found inadmissible as an arriving alien under 8 U.S.C. § 1182(a)(7)(A)(i)(I) in 2018
4 but was unable to challenge that determination because no charges were ever filed with the
5 Immigration Court. Dkt. 6, at 2. In their augmentation, Respondents neglect to mention that
6 after failing to file this charge with the Immigration Court in 2018 the agency continued to issue
7 I-551 stamps to Mr. Cheng confirming that he retained his conditional lawful permanent
8 resident status. Dkt 6, at 2-3. Based on the agency's action Mr. Cheng regularly traveled
9 internationally using his passport and I-551 stamp. He traveled at least once a year. Despite this,
10 they are now treating him as if they have not spent the last eight years taking the exact opposite
11 legal position on his immigration status.

12
13 In addition to the factual allegations made in the Respondent's Return, Petitioner has
14 also documented that he has sought a bond hearing from the Immigration Court, which was
15 denied solely based off the government claiming he is an arriving alien, and without any
16 opportunity to meaningfully challenge that determination. Dkt 1, at 7. He made no less than 5
17 requests with the Immigration Court to either strike the arriving alien designation and/or
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1 terminate proceedings based off the deficient charging document. The immigration court has yet
2 to decide the issue and has instead continued the matter for a later date.¹

3 Petitioner has documented that the administrative process has not provided a meaningful
4 forum for custody relief. Even before the current detention, Petitioner attempted to pursue
5 review through the immigration court. After CBP told him he was inadmissible in 2018 he
6 “filed an appeal with the immigration court,” but it was dismissed because not removal case was
7 before the court at that time, and “[t]he Petitioner’s case was never scheduled for a hearing.”
8 Dkt 6, at 2. This history illustrates the practical reality here: the Respondents’ proposed remedy
9 of waiting for the immigration system to provide review is not reliable in real time and has
10 already failed Petitioner, leaving him stuck in detention without a meaningful forum in which to
11 challenge their detention.

12 13 III. ARGUMENT

14 A. Section 1252(b)(9) is a channeling provision for review of removal issues, not a per se 15 bar to habeas relief ordering release or a custody review hearing.

16 Respondents rely on § 1252(b)(9) as an “unmistakable ‘zipper’ clause” and argue that
17 Mr. Cheng’s detention challenge must be funneled through the removal case and later petition-
18 for-review process. Dkt. 5 at 6-7. Respondents simultaneously acknowledge that the key

19 ¹ At the time of filing, the Petitioner had (1) denied the charge of inadmissibility through written
20 pleadings, (2) asked the immigration judge at a master calendar hearing to strike the arriving
21 alien designation, (3) filed a motion to terminate proceedings, (4) argued the motion at a Master
Calendar Hearing, (5) filed a supplemental Motion to Terminate. Since filing the Petitioner has
attended an additional Master Calendar Hearing and had his case continued.

1 limiting principle of §1252(b)(9) is a judicial channeling provision, not a claim-barring one.
2 Indeed, if Respondent's arguments about this court's jurisdictional limits were correct, all of
3 the recent decisions giving effect to bond orders would be ultra vires.

4 Moreover, Respondent's claim that this petition is somehow different than the other
5 cases this Court has decided finding the agency's invocation of 1225 is incorrect. They claim,
6 without justification, that Mr. Cheng's petition is "inextricably linked" to questions of law and
7 fact related to the removal proceedings. They provide no analysis of how an order from this
8 Court requiring the immediate release of Petitioner would undermine the removal proceedings
9 or prevent them from proceeding in the non-detained forum. They simply state it as fact. They
10 further claim that because they processed Mr. Cheng under §1225 there is no further analysis
11 required by this Court and they can detain the Petitioner without a bond hearing. Even if they
12 are incorrect about this determination, they claim the Court is without recourse to remedy the
13 error because of the zipper clause; and ostensibly because they said so. Courts have not been so
14 easily swayed and have repeatedly refused to recognize that individuals are properly held under
15 §1225 just because DHS claims that they are. *See, e.g. Domingez v. Hermosillo*, No. 2:25-cv-
16 02553-TMC, 2026 LX 76456 at *2 (W.D. Wash. Jan 5, 2026) (rejecting the government's
17 arguments that Petitioner was properly detained under 1225); *Rodriguez Vazquez v. Bostock*,
18 802 F. Supp. 3d 1297 (W.D. Wash 2025) (rejecting governments interpretation of aliens
19 properly detained under 1225). While admittedly, these cases involve different facts they still
20 involve the agency erroneously implicating 1225 detention. This is why they are relevant here.

1 The fact that Mr. Cheng was detained while entering the country does not change the fact that
2 the agency has impermissibly detained him under 8 U.S.C. § 1225.

3 Respondents have advanced no meaningful arguments in support of declining
4 jurisdiction in this case while recognizing it in many others. They do not attempt to engage
5 with this court's jurisdictional arguments in the now growing body of cases. They simply state,
6 without authority, that it has charged Mr. Cheng with inadmissibility under 1225 and he
7 therefore cannot seek habeas relief. Instead, they say, Mr. Cheng must bring his challenge first
8 to the immigration court, next to the BIA and then finally to the Ninth Circuit. This is
9 decidedly not the case. An order from this Court, requiring Mr. Cheng's release, will not
10 disrupt the removal proceedings, but will serve to disrupt the administrations abusive use of
11 mandatory detention. If he were released from custody, his case would be immediately
12 transferred to the Seattle Immigration Court, where the agency could continue to advance its
13 theory of inadmissibility. The only difference would be that Mr. Cheng would not be suffering
14 daily assaults on his liberty.

15 **B. Respondent's reading of Jennings is overbroad; Jennings supports district court**
16 **jurisdiction of detention process claims.**

17 The Respondent's asl claim that *Jennings* control's the Court's jurisdiction in this case.
18 This argument is a step too far. Respondents state that *Jennings* holds that habeas challenges
19 cannot survive unless the individual is not challenging the initial detention decision. That is not
20 what *Jennings* stands for. That reading collapses the entire analysis into a "removal-related"

1 world that would prevent any detainee from seeking habeas relief without first waiting for a
2 final order.

3 *Jennings* did not hold that a challenge that arises out of the initial decision is precluded
4 by 8 U.S.C. 1252(b), but rather, it stated it need not reach that issue because the parties agreed
5 that it was not a bar in their case. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). At best the
6 discussion of the jurisdictional limitations of § 1252(b)(9) state that they do not apply in the
7 specific instance. It is poor logic to extend this discussion to say that they would apply in all
8 other cases. It is disingenuous to read *Jennings* as stating that it was the **only** situation where §
9 1252(b)(9) would not apply, when what it really found was that it was **one** situation where the
10 court would maintain jurisdiction. *Id.*

11 The Respondents advance this theory out of a fear of piecemeal litigation. Claiming
12 there would be an overburdened court system if claims are allowed to proceed. This argument
13 is belied by their unwillingness to accept the courts repeated admonishments in the *Maldonado*
14 *Bautista* class cases. But it also does not apply, in this case because a habeas grant has no
15 preclusive effect on removal proceedings. To the extent that the Court is concerned about this
16 res judicata argument, it could explicitly cabin its order to either simply release Mr. Cheng or
17 provide an individualized bond hearing to determine if he is a danger or flight risk.

18 **C. The Suspension Clause and requirements of Due Process confirm that § 1252**
19 **cannot be read to eliminate effective habeas review of unlawful detention.**
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1 Petitioner is restrained of liberty now. He has repeatedly explained how delayed review
2 is not an adequate remedy for unconstitutional detention. Courts have always recognized that
3 each day of detention is irreparable harm.

4 Rather than remedying this harm, Respondents claim the Court should look the other
5 way because there is a lengthy process where Petitioner can bring his unlawful detention claims.
6 This reverses the premise of habeas relief – arguing for detention first and legal review later.
7 Habeas relief is about a remedy now, for constitutional harms being inflicted today. Reading §
8 1252(b)(9) to bar a district court from ordering even a custody hearing would produce exactly
9 the constitutional problem that habeas exists to prevent – detention insulated from meaningful
10 judicial review until it is effectively too late to matter. Mr. Cheng has now been unlawfully
11 detained for 62 days. Each time he has challenged his detention in Immigration Court the court
12 has refused to issue an order and instead continued the case to another day. This prevents him
13 from being able to challenge his detention on its face because he cannot even file an
14 interlocutory appeal without an actual order to challenge.

15 Respondents also confirm in their affidavits that they have prevented Mr. Cheng from
16 seeking administrative review in the past. There is no reason to believe that this detention will
17 be any different. Dkt. 6 at 2. Each time Petitioner has attempted to use administrative remedies,
18 going back to 2018, he has been rebuffed by the agency. Respondents claim this is no problem
19 because there is now a years long review process that will eventually work itself out.

20 Respondent's suggestion is that Petitioner simply continue to wait for Godot – some form of
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1 due process – while he remains detained. Despite this, he is committed to pursuing remedies in
2 removal proceedings, just out of detention.

3 In support of their contentions Respondents do not meaningfully engage with any of the
4 *Matthews* factors, or attempt to justify their interest in continued detention in this case. They
5 leave the Court to guess what their interest is. They make no claim that he poses a danger to the
6 community, or that he would be a flight risk. Instead, it seems their argument boils down this: a
7 CBP officer decided to detain Mr. Cheng, and there can be no second-guessing of that decision,
8 however wrong, until removal proceedings are finalized. This Court should not be swayed by
9 such facile argumentation.

10 **IV. CONCLUSION**

11 The Court should therefore grant Petitioner's habeas petition ordering his immediate
12 release, and further order that Respondents not re-detain him without providing an individualized
13 hearing before a neutral decision maker. Alternatively, the Court should grant Petitioner's habeas
14 petition and order that he be provided with a full and fair bond hearing under 8 U.S.C. § 1226(a).

15 Dated this 30th day of January 2026,

16
17 /s/ Adam W. Boyd
18 Hilary Smith, WSBA #60474
19 GIBBS HOUSTON PAUW
20 1000 Second Ave., Suite 1600
21 Seattle, WA 98104
(206) 929-3880
Adam.Boyd@ghp-law.net

1 *I certify that this memorandum contains 2,235 words, in compliance with the Local Civil*
2 *Rules.*

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